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**MEMORANDUM**

To: Kate Hansel/Lester Snow  
cc: Joe Bodovitz/Mike Mantell  
Governance Small Group  
From: Cynthia Koehler   
Date: Sept. 17, 1999  
Re: Comments on CET Governance Proposal

Thank you for the opportunity to provide comments on the CET "Draft Proposal For CALFED Long-Term Governance" (Sept. 8, 1999). The comments below have not been vetted with the entire Environmental Water Caucus but are consistent with previous EWC positions. Save The Bay very much appreciates the efforts of CET to facilitate discussion of this topic and understands that the paper is not a recommendation but an aid to developing solutions.

**Starting Assumptions**

Our comments stem in part from the following assumptions about CALFED:

1. The governance issue is best viewed in the larger context of assurances, and specifically the question: What is required institutionally to ensure that the performance standards set forth for each of the CALFED program elements are most likely to be achieved?
2. Each of the CALFED program elements (now 8 proposed) represents new tasks or responsibilities or goals that are not being carried out under existing mandates.

Obviously a great deal of what CALFED is proposing is closely related to certain ongoing activities and mandates. However, the purpose of CALFED is to fix 4 inter-related problems that are not being adequately addressed under the current set of laws and/or tools. Thus, each CALFED program element will necessarily involve new tasks, new funding and possibly new authorities. At the very least, the CALFED program elements will each require some revamping of existing related efforts.

3. The performance standards for each of the CALFED program elements will only be achieved if some entity is given the express mandate to do so.

This can happen in a variety of ways -- one agency can be responsible for achieving all 8 sets of standards or lead agencies can be assigned for each program element. The critical factor, particularly with regard to the eco-program, is that responsibility for the program standards is clearly assigned.

4. Long-term implementation involves 3 basic levels of activities; a) oversight, b) management and inter-program coordination and c) "direct implementation".

### **Comments and Recommendations**

#### **1. What is the status quo for purposes of program implementation?**

The starting point is not only the current structure of the Bay-Delta Program, but the broader status quo represented by the relevant agencies. The Problems and Issues Paper (attached to the Proposal) sets forth the problems that would arise if we were to use the existing Bay-Delta Program structure for long-term CALFED implementation.

A critical additional question is how well the current agency structure -- meaning the set of 15 or so federal and state agencies with responsibility for CALFED-related issues -- is positioned to implement the many facets of the CALFED long-term solution; and the extent to which modifications -- or a new institutions -- would be useful in attaining the program standards swiftly and equitably.

**Recommendation:** Prepare a brief analysis similar to the Problems and Issues Paper focusing on the agency status quo issues; who is currently responsible for efforts closely related to the CALFED program, how well are they coordinating on the implementation level, how do budgetary and appropriations considerations affect the ability of existing agencies to implement CALFED, etc.

#### **2. Will the performance standards be best met if oversight and management functions are merged in a single entity?**

The CET paper proposes a new commission that would take on both the oversight and management/inter-program coordination functions. There seems to be a fair amount of confusion about how this could/should work. Should the Commission staff have lead responsibility for meeting the performance standards of the 8 CALFED program elements?<sup>1</sup> Or should this responsibility be assigned to lead agencies with coordination

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<sup>1</sup> It has been suggested that because, like the Bay-Delta Program, the Commission staff is likely to be made up of agency staff, that the agencies would effectively retain primary responsibility for achieving the program standards. STB agrees with Kate that for all practical purposes, staff would report to the Commission -- not to their agencies of origin -- and would, if things worked as they do in the Bay-Delta Program, not serve as agency representatives.

and ties to the CALFED oversight board. This is a key -- perhaps the most key -- question and has large implications for the shape and scope of the Commission being proposed.

**Recommendation:** Revise the Proposal to explore the 3 options for dividing the oversight and management functions among an oversight entity and the CALFED agencies:<sup>2</sup> A) oversight and lead agency authority housed in one new agency; B) oversight and lead agency authority separated institutionally but formally coordinated; or C) shared responsibility for lead agency authority between oversight entity and other agencies. Brief descriptions of these options are below.<sup>3</sup>

**A) Commission to provide both oversight and lead agency authority.** Lead responsibility for achieving performance objectives for all 8 CALFED program elements would be assigned to the Commission. Legislation establishing Commission would be required. Commission Board would provide oversight for the entire program with management functions performed by staff. Division Directors would be assigned responsibility for each of the CALFED program areas. They would do all budgeting, program priority setting, work with scientific review panels as appropriate. No authorities would be taken from existing agencies. No new ecosystem restoration conservancy would be established.

Agencies would participate primarily (1) on the Commission Board and (2) in direct implementation activities. Agencies would not have new mandates or funding to achieve CALFED program standards (other than in their roles oversight and direct implementation roles). Funds for all CALFED program implementation to run mainly through Commission.

**B) Oversight and lead agency authority separated institutionally but formally coordinated.** Lead authority for meeting program standards assigned to agencies already primarily engaged in related activities (or possibly, for the eco-program, some sort of conservancy). Oversight would be provided by the Commission. Legislation providing agencies with mandates and authorities necessary to carry out the CALFED program (but currently lacking or unclear) would be required, but no existing authorities would be taken away. Same legislation could establish Commission. Program coordination at the management level would be achieved through a formal agreement among the lead agencies and Commission.

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<sup>2</sup> There seems to be no real issue with regard to the "direct implementation" function; all seem to agree that this level of actual project implementation will be done by some combination of agencies, nonprofits, consulting firms and others and that for the most part an oversight entity under any of the 3 options discussed below would not take on direct implementation tasks itself.

<sup>3</sup> Each case assumes the same Commission Board.

Commission staff would not have lead authority for achieving performance standards but would be responsible mainly for ensuring coordination, identifying areas of conflict and facilitating resolution, and staffing the Commission Board. Program funds to run mainly through lead entities, but only after approval by Commission. Funds for Commission staff to run directly to Commission.

**C) Responsibility for lead agency authority shared between oversight entity and other agencies.** Commission would share mandate for achieving the CALFED performance standards with agencies. Staff similar to that described in A) above but with more integrated involvement with agencies which would also be formally tasked with achievement of the performance standards. Responsibility for program budgeting, identification of priorities, and other management responsibilities etc. to be shared between Commission and agency staffs. Legislation similar to B) above would be required, but no existing agency authorities would be taken away. There may or may not be a new-ecosystem conservancy under this scenario. CALFED Program funds would run mainly through Commission instead of the agencies.

Within these broad categories are an infinite number of variations that could work. With each we need to examine several questions related to the likelihood of meeting the performance standards including but not limited to:

- Which will most facilitate the long-term funding required?
- Which is most likely to provide a workable forum for the various CALFED mandates?
- Which will ensure that each program element has an advocate of equivalent abilities/authorities?
- Which is most compatible with agency objectives?
- Which builds best on existing positive momentum?
- Which is most likely to allow for consolidation of related or redundant programs over time?
- Which is most likely to promote accountability for expenditures as well as performance?